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Increasing pressure by state governments to end racial discrimination and defacto school segregation in public schools is predicted. Deeply ingrained American prejudice and Congressional racalcitrance have so far hindered progress in this area and, in fact, schools are more segregated now than they were at the time of the Brown decision. The white suburban noose around the inner city contributes further toward hampering solutions to metropolitan problems. However, recent legislation and judicial actions on the state level will establish new patterns which will generate movement "to mitigate the effects in schools of racial discrimination and defacto segregation." (NH)

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Dean Stephen K. Bailey of the Maxwell School of Citizenship and Public Affairs, Syracuse University, foresees increasing pressure by state governments to end racial discrimination and de facto segregation in the public schools. Dean Bailey, while acknowledging "dramatic pockets of improvement," blames the lack of greater progress on prejudice ingrained in the American society and on Congressional recalcitrance. Indeed, Dean Bailey points out that on an "overall national basis we are more segregated today in our schools than we were fourteen years ago. And in recent years black power, white power, teacher union and other forces and factors have become directly involved in the direction and rate of change." Moreover, he adds, the "white noose of suburbia" mocks attempts to solve metropolitan problems within the confines and constraints of inner-city jurisdictions. Despite these forces, Dr. Bailey contends that recent legislative and judicial initiatives on the state level seem to be establishing new patterns and generating a "probably inexorable" general movement to mitigate the effects in schools of racial discrimination and de facto segregation.

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THE INCREASED ROLE OF FEDERAL AND STATE GOVERNMENTS IN CIVIL RIGHTS ISSUES AFFECTING EDUCATION

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Drug addition is a terrible thing. The extent of its real horror--the enslavement of men's minds and souls--can be gauged by the agony of withdrawal. Anyone who has witnessed an addict in the process of "kicking the habit" knows that man's imagination car conjure few more terrifying hells. The addict goes through such excruciating physical and psychic torment that he would do anything--literally anything--to return to the solace of his powder, his smoke, or his needle.

The people of this nation are collectively in the process of trying to "kick the habit" of 300 years on the drug of prejudice and discrimination. The torment is acute. It is so acute, in fact, that some of us will do almost anything to avoid the "cold turkey" of withdrawal. As regards education, we will pull up long-held family stakes and move to the suburbs where the powder is white and merciful. We will threaten superintendents and school board

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members and politicans with defeat at the polls--sometimes with bodily harm--if they interrupt our access to the customary sedative. We will threaten our neighbors who try to secure their legal and Constitutional rights. We will spend an uncommon amount of money to send our children to private schools where they can enjoy their racial opiates in peace. We will rationalize the notion of community schools to mean racially segregated schools only, and we will support gerrymandered school districts to enforce this rationalization.

In our moments of sobriety we know that addiction to the drug of racism is both immoral and illegal, and we will approve legislative and judicial pieties on the subject. But when the old craving begins, we will sanction almost any means to see to it that withdrawal is not, in fact, enforced.

This, at least, is my reading of American behavior since the Brown cases of the middle 1950's. And the figures confirm my diagnosis. More children attend schools that are 90% or more of a single race today than was the case in 1954. And this is true across the land: North and South, East and West. It is true in small cities, in large cities, and in metropolitan areas--especially in metropolitan areas. The U.S. Commission on Civil Rights reported last year that school segregation in the nation's metropolitan areas--where two-thirds of both the nation's Negro and white populations live--is more severe than the national

figures suggest. And it is growing.

This baleful reality exists in the face of 15 years of Federal action to end racial segregation in our schools; and in the face of the attempts of a growing number of State governments to supplement and even to surpass Federal mandates. Our practices ignore or defy the most penetrating sociological and psychological findings about the disastrous effects of continuing on the path of our traditional addiction.

The symptoms of addiction are all around us: violence, squalor, dependency, ignorance, crime, disease, unemployment, fear, ugliness, hatred, alienation.

What strange perversity--possibly rooted in immemorial animal instincts--drives us to such irrational and suicidal behaviors? Perhaps we shall never know, but, at least, we can make a rational appraisal of what we are constrained by law--and by the Constitution--to attempt. And, perhaps, with this knowledge, we can take new heart in attempting to reverse present trends. Our Constitutional, legislative, and administrative doctors have told us what we must do to be cured. The job ahead is to take them seriously. For, if we do not, the consequences for the body politic are patently disastrous.

Fortunately for the sake of our society, our Federal and State doctors are not letting us rest. They are, in fact, closing in on our evasions, rationalizations, and escapes. This in itself is a cause for ultimate hope.

For purposes of current discussion, the story of the increased role of Federal and State governments in civil rights issues which affect education dates from 1954. This does not mean that Federal and State governments were silent on these issues before that date. The Brown cases had important precursors in the late 1940's and early 1950's--notably the 1947 report of President Truman's Committee on Civil Rights which called for the elimination of segregation and discrimination in schools; and the Texas Law School and the University of Oklahoma cases in 1949 and 1950 clarifying the meaning of educational equality for Negrces in higher education.

The Brown v. Board of Education of Topeka, Kansas was the great watershed. In this case, the "separate but equal" doctrine enunciated by the Court in 1896 in Plessy v. Ferguson was expressly overturned. Resting its decision in part on sociological conjecture, the Court held that "separate educational facilities are inherently unequal," and deny pupil-citizens the equal protection of the laws.

A year later, in a second Brown decision, the Court ruled on the issue of compliance. It recognized the underlying patterns of racial segregation across the nation--especially in the 17 Southern and border States and the District of Columbia, and acknowledged that there would be varying local problems. But it mandated local school boards to proceed towards desegregation "with all deliberate speed," and asked lower Federal courts to require "a prompt

and reasonable start toward full compliance."

It would be unduly tedious to trace the judicial decisions of the past 13 years related to the implementation of the Brown doctrine. Scores of District and Circuit Court decisions and dicta have been handed down--some to be overturned, most to be upheld, by the Supreme Court. But the consistent, melancholy theme has been one of attenuation, postponement, and State and local evasion. A decade after the first Brown case, the Supreme Court, in exasperation, noted that there had been "entirely too much deliberation and not enough speed." States and local school districts have experimented with both crude and elegant ruses--all the way from closing schools entirely, to adopting tuition grants and tax credits for whites attending private schools, to constructing various forms of tokenism, to drawing new school district lines with the goal of substituting de facto for de jure segregation. The courts have consistently hounded these evasions, but the process has been maddeningly slow and expensive. Informal social and economic pressures at the community level have too often undercut the enforcement of judicial determinations--even when the latter have been clear and mandatory.

The glacial pace of desegregation by the judiciary inevitably led to militant cries on the part of the aggrieved for more immediate legislative and executive action--especially at the Federal level. Here the great breakthroughs came in the mid-1960's; notably in the Civil

Rights Act of 1964, and in the Elementary and Secondary Education Act of 1965.

What the Brown case was to Constitutional doctrine, the Civil Rights Act of 1964 was to legislative doctrine. Presaged by more modest civil rights legislation, and by the controversial and abortive Powell amendments of the late 1950's and early 1960's, the 1964 Act repaired to the enormous leverage of federal money. In its famous (some would say infamous) Title VI, the Act barred discrimination under any program or activity receiving Federal assistance. In essence, the law said, "If you discriminate, you cannot receive Federal funds." This stricture applies, of course, to all Federal assistance, not to educational assistance alone; but its weight has been particularly felt in the schools. And, of course, the 1964 Act had other provisions specifically directed at education.

Title IV, for example, required the U.S. Office of Education to make a survey and report to the Congress within two years on the progress of desegregation of public schools at all levels. This, of course, was the origin of the Coleman Report.

Title IV also authorized the U.S. Office of Education to give technical and financial assistance, if requested, to local public school systems planning or going through the process of desegregation. Not only has Title IV money been used to aid local educational agencies directly, it has supported in whole or in part a number of new units in State

departments of education (usually called Inter-group or Intercultural Technical Assistance units) designed to give Title-IV-type services to local school districts. Through grants and contracts, Title IV has also been used to support in colleges and universities a number of special institutes and programs designed to deal with the desegregation problem.

Finally, Title IV authorized the Attorney General, upon legitimate complaint, to file suit for the desegregation of public schools and colleges, although the law made explicit that this provision did not authorize any U.S. officials or courts to issue any order seeking to achieve racial balance in schools by transporting children from one school to another, nor did it enlarge the courts' existing powers to ensure compliance with Constitutional standards. The new powers granted to the Attorney General had the effect of transferring the onus of initiating formal suits from private citizens or private groups like NAACP--plagued with limited resources and fears of local retaliation--to the strong back of the Department of Justice. To date, the Department has been a participant in over 100 cases undertaken as a result of complaints filed under this provision.

The real teeth in the Civil Rights Act of 1964, however, are to be found in Title VI--especially as applied to Federal grants under the Elementary and Secondary Education Act of 1965. ESEA has provided over a billion dollars a year to local school districts for the target population of

the educationally disadvantaged. To qualify, local school districts must file statements of compliance with Title VI of the Civil Rights Act of 1964.

This seems to be simple and straight-forward. Alas, it has been neither. What, in fact, constitutes compliance? What practices are in reality prohibited or sanctioned by Title VI?

In order to help States and localities understand their educational responsibilities under Title VI, the U.S. Office of Education, in April 1965, issued a set of guidelines setting forth the kinds of desegregation programs required to satisfy Title VI, and the rates at which they had to be effected.

Three basic alternative procedures were described for establishing eligibility for Federal assistance:

First, school districts with no vestiges of segregation in pupil and faculty assignment or in any other school activities and services could file an Assurance of Compliance.

Second, school districts under court orders could qualify by filing a copy of the final order along with an Initial Compliance Report which would describe the racial breakdown by school-age population, racial distribution of students and staff in the schools, and the procedures and activities utilized to accomplish desegregation.

And, third, school districts could submit Initial Compliance Reports and voluntary desegregation plans for either the establishment of non-racial attendance zones or

student free choice of schools, or both. The rate at which desegregation had to be achieved under voluntary desegregation plans was based on a target date of fall 1967 for the desegregation of all grades in the schools. A "good-faith start" towards that goal for newly desegregated systems would normally consist of at least four grades the first year--i.e. the year beginning September 1965.

Detailed provisions in the Guidelines elaborated on these major procedures, and covered faculty and staff, school services, notice to parents and the public, and transfer and reassignment policies. The Guidelines explicitly reserved to the Commissioner flexibility to prescribe alternative procedures in particular situations where necessary.

The Guidelines were drawn with both Congressional intent and judicial decisions in mind, but the former was by no means clear, and the latter provided conflicting clues. Inevitably, ambiguities remained. For example, let us assume that families are assured freedom-of-choice in school assignments by a local board. What if no public or school transportation exists to make the choice real? What is "adequate notice" to parents and the public: a squib in the back pages of a local newspaper? a single radio announcement? a personal letter? What if a free-choice program is officially adopted but local bigots so terrorize a child or his family that their "free" choice is to stay put in a segregated school? If an all-white school accepts one Negro

teacher, is the faculty thereby desegregated? When does de facto segregation caused by residential patterns become in fact de jure segregation as the result of the redrawing--or the failure to redraw--school district lines?

In the summer of 1965, the U.S. Office of Education was literally swamped with submissions and demands for clarification. The Commissioner was forced to detail personnel from every bureau in the Office to help clear the backlog. And there was an inherently cruel dilemma: funds withheld because of violation of Title VI would be funds withheld from some of the school districts marked by exceptional cultural and educational deprivation and, therefore, in most need of Federal assistance.

The inevitable consequence of these pressures and anomalies was for the Office, understandably, to settle for paper compliance and tokenism. Even so, Earl Warren was soon replaced by the Commissioner of Education as the chief whipping boy of Southern politicians. At least one State legislature called for the impeachment of Commissioner Howe. Some Congressional reaction was equally vehement. Howe was referred to as an "educational commissar," a "commissioner of integration," a "socialist quack." Committee and subcommittee members fenced with HEW and the Office of Education on the question of whether the Guidelines did or did not represent Congressional intent.

And the issues were not confined to the South or to Congressional intent. Even before Harold Howe took over as

Commissioner of Education, Francis Keppel, the preceding Commissioner found himself out of line with a certain kind of Presidential intent. The story is worth telling in brief:

As frequently pointed out by both Southern and liberal critics, enforcement of prohibitions on discrimination was primarily restricted to the South. The problem of de facto segregation in the North remained largely untouched. Compliance submissions, for example, were required only in States that had formerly maintained legally segregated school systems.

But, in the summer of 1965, a militant civil rights organization, the Chicago Coordinating Council of Community Organizations, carried to the U.S. Office of Education its efforts to end de facto segregation in Chicago schools by seeking to cut off ESEA funds under Title VI of the Civil Rights Act of 1964. The Council's case was well enough documented, and the pending Chicago Title I plan sufficiently questionable, that Keppel sent USOE investigators to that city. In late September, Chicago School Superintendent Benjamin Willis indicated to the U.S. Office that he could not supply requested compliance information for at least several more months. Commissioner Keppel then wrote to Willis that--on the basis of the investigation so far--probable non-compliance with Title VI was indicated, and that the U.S. Office was, therefore, deferring $30 million in ESEA funds until the matter could be satisfactorily settled. Keppel's letter was delivered on Friday, October 1, 1965.

On the following Monday, Mayor Richard Daley, a power in national Democratic politics and a long-time defender of Federal aid to education, was in New York on the occasion of the Papal visit to the United Nations. So was President Johnson. A discussion ensued in which the Mayor set forth in no uncertain terms his strong feelings on the fund delay. The next day, Keppel and top HEW officials were summoned to the White House, and after a meeting with the President (in which it is rumored that Johnson was almost as rough on his staff as Daley had been on him), Under Secretary Wilbur Cohen flew to Chicago to work out an agreement that freed the ESEA funds.

For Keppel, the incident was deeply disturbing, even though Cohen had been able to wring some desegregation commitments out of the Chicago school system. For Title VI policy, the Chicago affair brought an effective end to attempts at Northern enforcement, at least for the following couple of years, since it graphically demonstrated the absence of a legislative mandate for dealing militantly with de facto segregation. Commissioner Howe subsequently stated that racial concentrations in schools resulting from housing patterns and other non-educational manifestations of discrimination, as well as from affirmative school board action in setting assignment patterns, are beyond the reach of Title VI "unless intent can be established." It is true that in June 1967, District Court Judge J. Skelly Wright held de facto segregation in the District of Columbia

schools unconstitutional without a finding of intent to discriminate. But it is unclear whether in fact this decision is a harbinger of a predominant new legal position. For the present it stands only as an isolated lower court case.

Although the Office of Education continues to investigate de facto segregation in several Northern cities, the announced policy of the Office is to await a definitive legal decision before attempting enforcement.

As mentioned earlier, however, Title VI is not the only arrow in the Commissioner's quiver. In speeches delivered in profusion across the nation, the Commissioner has suggested alternative measures: programs under Title IV of the Civil Rights Act for teacher training in dealing with problems of integration; State and local efforts through open enrollment; paired schools; the busing of students; and city and suburban exchanges of teachers and pupils. Howe has urged the assignment of more experienced teachers and the utilization of more challenging educational programs in slum schools. He has suggested school construction programs to break up patterns of segregation; and realistic, in-depth curricula on racial problems.

For a number of these approaches Howe has pledged Office of Education support through planning funds, and has called attention to the Kennedy and Powell bills designed to provide additional USOE authority in these areas. He has called de facto segregation "education's most crucial issue," and has taken school administrators to task for their lack

of leadership. In one speech he wrote,

> "The load (schoolmen) must carry is that of irritating a fair percentage of our white constituents, of embarrassing some governors and mayors, of alarming some newspaper publishers, and of enraging suburban taxpayers who in proportion to their means are not paying as much for their good schools as paupers in the cities are paying for their bad ones."

This is stiff medicine, and it has been made increasingly bitter to swallow by new Title VI guidelines issued in 1966 and 1968, and by the Green Amendment of 1967 to the Elementary and Secondary Education Act mandating that Title VI guidelines be applied nation-wide, not just to the Southern and border States.

The more recent guidelines have been tougher than the earlier ones. They have clarified many of the ambiguities and closed many of the loopholes in the 1965 version. In addition, the 1968 Guidelines have directly addressed the problem of the quality of ghetto schools in areas where, because of socially enforced residential patterns, desegregation is an all but meaningless term--at least, for the forseeable future. Whether viewed as a practical response to Black-Power militancy, or as a curious reversion to the Plessy v. Ferguson, or as a simple recognition of current social intractabilities, the 1968 Guidelines give special visibility to the central paradox of racial policy in education. The paradox can be put in the form of a question: if you gild the ghetto schools, will you not enthrone Plessy; if you do not gild the ghetto schools, will you not consign

millions of minority children to inferior educational opportunity?

What the Office of Education is presently saying is that we must live with the paradox, that we must go with Brown v. Topeka where possible; that we must put teeth into the Plessy notion of equal where separation is a fait accompli.

The 1968 Guidelines attempt to provide examples of practices which may cause a denial of equal educational opportunities in schools operating on a de facto segregation basis. Among these practices are: over-crowded classes and activities; assigning less-qualified teachers to schools attended largely by minority children; providing poorer facilities and instructional equipment and supplies at such schools, and higher pupil-teacher ratios or lower per pupil expenditures.

The Guidelines also hold local school districts responsible for planning the location of new schools, and additions to or rehabilitation of existing schools, in a way that does not segregate students on the ground of race, color, or national origin; and for hiring and assigning teachers and other professional staff on a non-racial basis.

Again, the net effect of the newer guidelines is to press harder for effective de jure desegregation and to insist that where separate schools exist because of intractable residential patterns, facilities and programs must be substantially equal within the school district.

This essentially brings us up to date as far as Federal policies are concerned.

State governments have played a lesser role--at least on the positive side. But two types of State activities have emerged in recent years.

First, as mentioned earlier, a number of State education departments have created units to provide technical assistance to local educational agencies in handling intergroup and intercultural relations connected with desegregation efforts. These Title-IV-type activities have been abetted by the decision of the Office of Civil Rights of the Department of Health, Education, and Welfare to cooperate with State departments, keeping them informed of compliance activities in their States, inviting them to participate in review and negotiation procedures, and encouraging them to make recommendations to school systems as to steps which should be taken to achieve compliance.

Second, a few States--notably New York, California, New Jersey, Massachusetts, and Washington--have pioneered in State legislation, Board of Education rulings, and State Court decisions dealing with desegregation issues. Some have developed racial balance formulas; others have required compliance with desegregation mandates before approval of new construction plans; others have established specific procedures for determining the legitimacy of community decisions affecting racial balance in education.

These State initiatives are probably the beginning

of a series of similar developments in other States and regions. As in the case of Federal mandates and inducements, State action creates a Pandora's box of local tensions and conflicts; but patterns are beginning to be set, and the general movement is probably inexorable.

Furthermore, it is patent that State decisions governing decentralization, school-district consolidation, the distribution of State aid, and tax and bonded-indebtedness limitations are all pregnant with implications for the racial composition and practices of school systems.

We must return, however, to where we began, because--in spite of recent Federal and State activity--an irresistible force seems to have met an immovable object.

Actually, this is not entirely fair. The object has not been totally immovable, and some of the lack of accomplishment has been occasioned by Congressional denial of HEW requests for additional compliance staff. Up until the end of the 1966-67 school year, a staff of 37 professionals was responsible for handling enforcement of Title VI requirements in the entire South with its nearly 5,000 school districts. HEW had asked $1.5 million for compliance activities; Congress had granted $770,000. For the 1968 Fiscal Year, Secretary Gardner requested 131 new positions for civil rights enforcement; Congress approved one-half the request.

Despite this terrific overload on the compliance staff, accomplishments have been chalked up. Enforcement has been increasingly tightened. As of January 1966, funds

had been terminated for 52 districts. All were cases in which school boards had refused to file desegregation plans or appropriate court orders. No cases were even initiated by the Office of Education against districts that were failing to carry out their desegregation promises. Two years later, however, by January 1968, 75 districts had had funds terminated and 141 others had proceedings pending against them. The large minority of these proceedings were for poor performance under desegregation plans as revealed by site visits of HEW compliance officers.

In terms of achieved desegregation since 1965, the percentage of Southern and border State Negro students enrolled in schools with white students has more than doubled. In the 11 States of the deep South, where only 2% of Negroes went to school with whites in 1964, approximately 18% were enrolled in biracial schools at the beginning of this year.

But, in spite of all of these accomplishments, in spite of dramatic pockets of improvement, the melancholy fact remains that on an overall national basis we are more segregated today in our schools than we were 14 years ago. And in recent years, Black-Power, white-power, teacher-union and other forces and factors have become deeply involved in the direction and rate of change. Many of these forces have run counter to Constitutional principles and legislative and administrative mandates.

The clash continues, and school superintendents are smack in the middle. Charged by law and by edicts of the

courts, and induced by grants-in-aid from Federal and State authorities to further desegregation, they are surrounded by community pressures--both black and white--resistant to educational integration. And for those in central cities, the white noose of suburbia mocks attempts to solve metropolitan problems within the confines and constraints of inner-city jurisdictions. The irony, of course, is that the most persistent fear--that the mixing of the races in schools will lower educational standards for middleclass whites--has been thoroughly disproved by empirical social science research.

It is not easy for school officials to combat these pressures, or to rally the community support to enforce changes which they know to be both legal and moral. But, as Emerson wrote, "Great men, great nations, have not been boasters or buffoons, but perceivers of the terror of life, and have manned themselves to face it."

Modern school officials share the obligation--and, in a larger sense, the privilege--of facing up to this terror.